

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

PL 2

16, 941

FILE: B-194714.2

DATE: August 6, 1979

MATTER OF: Oswego Package Boiler Company,
Cyclotherm Division

DLG 02510

DIGEST:

1. [Protest alleging improper rejection of bid filed with GAO more than 10 days after initial adverse agency action on protest to agency is untimely. Although protester continued to protest to agency rather than appeal to GAO, it nevertheless is required to file protest with GAO after notification of initial adverse agency action.
2. Protester may not delay filing of protest with GAO pending debriefing where grounds for protest were well known prior to debriefing.

Oswego Package Boiler Company, Cyclotherm Division (Cyclotherm) protests the rejection of its bid for steam heating boilers under invitation for bids CG-915025-A, issued by the United States Coast Guard. The Coast Guard found Cyclotherm's bid nonresponsive because it omitted a price for one item and deviated from the delivery schedule specified in the solicitation.

Cyclotherm timely protested this decision to the Coast Guard by letter of April 12, 1979 wherein the firm requested written advice of the agency's reason for rejection and a "formal hearing." By letter of April 18, the Coast Guard explained its decision and informed Cyclotherm that (its request for award abeyance could not be considered.) A meeting ^{per bill} between contracting officials and ^{the firm} Cyclotherm concerning the protest, ^{was the firm} held on May 11. Cyclotherm (subsequently protested to GAO.) our Office on May 18.

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For the following reasons, we believe Cyclotherm's protest is untimely under our Bid Protest Procedures, 4 C.F.R. Part 20 (1979).

A protest must be filed with the contracting agency or GAO within 10 days after the basis for protest is known. 4 C.F.R. §20.2(b)(2). When a protest is filed initially with a contracting agency, a subsequent protest to GAO must be filed within 10 days after the protester has actual or constructive knowledge of initial adverse agency action on its protest. 4 C.F.R. § 20.2(a). The Coast Guard's April 18 letter informed ^{the firm} Cyclotherm of the details of the bid rejection, in effect denied Cyclotherm's protest and was initial adverse agency action. Since Cyclotherm's protest to our Office was not filed within 10 days of notice of adverse agency action on its protest to the agency, it is untimely.)

(Although ^{the firm} Cyclotherm apparently continued to seek clarification of the Coast Guard's decision at the agency level, it was nevertheless required to file a protest with GAO after notification of initial adverse agency action. Mr. Scrub Car Wash Systems, Inc., B-186586, July 9, 1976, 76-2 CPD 29. Generally a protester may reasonably withhold filing a protest with this office until it has had a debriefing from the contracting agency to learn why its bid was not considered for award.) ^{But in this case,} ~~But~~ ^{the letter} ~~where a potential protester had been sufficiently informed of the basis for rejection prior to any debriefing,~~ ^{from the} ~~we will not permit a delay in filing the protest pending the debriefing since no apparent useful purpose is served.~~ ^{will not be permitted.} Informatics, Inc., B-188564, April 18, 1977, 77-1 CPD 272.

Accordingly, we conclude that Cyclotherm's protest is untimely and not for consideration on the merits.

Milton J. Socolar
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General Counsel